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In re Application of
TANGLER et al.
Application No.: 09/936,802
PCT No.: PCT/US00/01434
Int. Filing Date: 21 January 2000
Priority Date: 08 February 1999
Attorney Docket No.: NREL 99-17
For: COOLING-TOWER FAN AIRFOILS

DECISION

This decision is in response to the submission filed on 13 November 2002.

BACKGROUND

On 21 January 2000, applicant filed international application PCT/US00/01434, which claimed a priority date of 08 February 1999. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 10 August 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 31 August 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 08 August 2001.

On 14 September 2001, applicants filed a TRANSMITTAL LETTER (FORM PTO-1390) for entry into the national stage in the United States which was accompanied by, *inter alia*, an authorization to charge the U.S. Basic National Fee to Deposit Account No. 14-0460, an unexecuted declaration of inventors, and a petition to revive under 37 CFR 1.137(b). These application papers were identified by applicants with attorney docket number NREL 99/17 and were assigned application number **09/936,802**. The first page of the Transmittal Letter indicates the international application number as PCT/US00/01742. However, the title, inventors, and priority date indicated on the Transmittal Letter do not correspond to PCT/US00/01742. The declaration also indicates the international application number as PCT/US00/01742 but the title, inventors, and priority date listed on the declaration do not correspond to that international application number.

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On 30 January 2002, applicants filed a submission via facsimile transmission which requested that the copy of the application papers accompanying the submission be accorded a receipt date of 14 September 2001 and be processed as a national stage application, which was treated as a petition under 37 CFR 1.181. The application papers included a TRANSMITTAL LETTER (FORM PTO-1390) for entry into the national stage in the United States which was accompanied by, *inter alia*, an authorization to charge the U.S. Basic National Fee, an unexecuted declaration of inventors, and a petition to revive under 37 CFR 1.137(b). The application papers were identified by applicants with attorney docket number NREL 99/17 and were assigned application number 10/089,469.

On 08 February 2002, a decision was mailed in application number **09/936,802** granting applicants' petition to revive under 37 CFR 1.137(b).

On 27 February 2002, the United States Designated/Elected Office (DO/EO/US) mailed in application number **09/936,802** a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 22 March 2002, applicants filed a response in application number **09/936,802** to the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 which was accompanied by a declaration of inventors. This declaration identified the specification being executed as serial number 09/936,802 filed on 14 September 2001.

On 12 April 2002, the DO/EO/US mailed in application number **09/936,802** a NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 indicating the 35 U.S.C. 371(c) date as 22 March 2002. This Notice indicated the international application number as PCT/US00/01742.

On 30 September 2002, a decision was mailed in 10/089,469 granting applicants' petition under 37 CFR 1.181 filed 30 January 2002. The decision also indicated, however, that applicants must file a petition under 37 CFR 1.182 to clarify the discrepancies in the papers filed 14 September 2001 before these papers could be processed. It was also noted that a new declaration was required.

On 13 November 2002, applicants submitted a TRANSMITTAL LETTER (FORM PTO-1390) for entry into the national stage in the United States which was accompanied by, *inter alia*, an authorization to charge the U.S. Basic National Fee. The Transmittal Letter indicated that this was a first submission of items concerning a filing under 35 U.S.C. 371 of international application number PCT/US00/01434. Accordingly, the submission was assigned application number 10/276,157. The submission was accompanied by a "PETITION AND STATEMENT UNDER 37 C.F.R. § 1.182" and a declaration of inventors.

On 04 December 2002, the USPTO mailed in application number **09/936,802** a first Office action on the merits, which indicated, *inter alia*, that the oath or declaration was defective.

On 08 April 2003, applicants submitted in application number **09/936,802**, *inter alia*, a new declaration of inventors.

On 13 May 2003, the USPTO mailed in application number **09/936,802** a NOTICE OF ALLOWABILITY indicating, *inter alia*, that the declaration submitted 08 April 2003 was defective and that a new declaration of inventors was still required.

DISCUSSION

Petition Under 37 CFR 1.181 filed 30 January 2002

As noted above, the original application papers filed 14 September 2001 have been located and assigned application number **09/936,802**. Accordingly, the decision mailed 30 September 2002 in application number 10/089,469 is hereby VACATED. The petition under 37 CFR 1.181 filed 30 January 2002 is DISMISSED as MOOT.

In that only one national stage of a PCT application is permitted, the submission filed 30 January 2002 has been placed in application number **09/936,802**. The decision mailed 30 September 2002 has also been placed in application number **09/936,802**. Assigned serial number 10/089,469 has been cancelled. Applicant should use application number **09/936,802** in all future communications with the Patent and Trademark Office in regards to the U.S. national stage of international application PCT/US00/01434.

Petition Under 37 CFR 1.182 filed 13 November 2002

Again, in that only one national stage of a PCT application is permitted, the submission filed 13 November 2002 has also been placed in application number **09/936,802**. Assigned serial number 10/276,157 has been cancelled. Again, applicant should use application number **09/936,802** in all future communications with the Patent and Trademark Office in regards to the U.S. national stage of international application PCT/US00/01434.

A review of the application file including counsel's statements in the present petition, as well as a review of the USPTO file for PCT/US00/01742, reveals that the indication of international application PCT/US00/01742 was incorrect, and that the present application should in fact be the national stage application of international application PCT/US00/01434. The NOTICE OF ACCEPTANCE OF APPLICATION mailed 12 April 2002 contained the incorrect international application number. (The international application number was indicated as PCT/US00/01742 rather than as PCT/US00/01434.) Accordingly, the NOTICE OF ACCEPTANCE mailed 12 April 2002 is hereby VACATED.

Declaration of Inventors

The declaration filed 14 September 2001 and the declaration filed 30 January 2002 were not in compliance with 37 CFR 1.497(a)-(b) since each declaration failed to properly identify the specification to which it was directed. The declaration of inventors filed 22 March 2002 is the first declaration which was filed which was in compliance with 37 CFR 1.497(a)-(b). Accordingly, the 35 U.S.C. 371(c) date is 22 March 2002. It is also noted that while the declaration is in compliance with 37 CFR 1.497(a)-(b), it is not necessarily in compliance with 37 CFR 1.63. Accordingly, the requirement for a new declaration set forth in the NOTICE OF ALLOWABILITY mailed 13 May 2003 still stands.

CONCLUSION

For the reasons set forth above, the submissions filed 30 January 2002 and 13 November 2002 have been placed in application number 09/936,802. The decision mailed 30 September 2002 has also been placed in application number 09/936,802.

For the reasons set forth above, the decision mailed 30 September 2002 is hereby VACATED.

For the reasons set forth above, the NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 mailed 12 April 2002 is hereby VACATED.

For the reasons set forth above, the petition under 37 CFR 1.181 filed 30 January 2002 is DISMISSED as MOOT.

For the reasons set forth above, the petition under 37 CFR 1.182 filed 13 November 2002 is GRANTED.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application including (1) mailing of a corrected NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371

(Form PCT/DO/EO/903) indicating the international application number as PCT/US00/01434 and according the application a 35 U.S.C. 371(c) date of **22 March 2002** and (2) issuance of a corrected filing receipt. The application will then be forwarded to the Office of Patent Publication.



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